IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28-6-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.1911 of 1998

S. Victor ... Petitioner

Vs.

1. The Labour Officer,
Tirunelveli

2. G.S.R.Boomibalagan,
Sidco Balagan, Poo Mark Beedi,
Sadaiyapuram, Mylapuram P.O.
Mukkudal (Via),
Tirunelveli District.

3. A.R.Rajagopal
2, Kamaraj Street,
Sadaiappapuram
Mukkudal - 627 601,
Tirunelveli District. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified mandamus, to call for the records of the first respondent in Beedi Case No.414 of 1991 dismissing the petitioner's appeal under section 31(2)(a) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 dated 13.6.1994 and quash the same and to direct the second respondent herein to reinstate the petitioner with continuity of service and backwages and all other consequential benefits and award cost.

WEB COPY

For Petitioner : Mr.D.Hariparanthaman

Respondents 2 & 3 : Mr.R.Parthiban

O R D E R

This writ petition arises out of the order of the first respondent passed in Beedi Case No.414 of 1991 dated 13.6.1994

https://hcservices.ecourts.gov.in/hcservices/

dismissing the appeal filed by the petitioner under section 31(2)(a) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and to direct the second respondent to reinstate the petitioner with backwages, continuity of services and other benefits.

2. The brief facts necessary for disposal of the writ petition as stated in the affidavit are as follows.

(a) Second respondent is the manufacturer of Sidco Balagan Poo Mark Beedi and it has various branches. The third respondent is an employee of the second respondent. The second respondent, to evade excise duty, made the third respondent as benami for the branch activities in Vagaikulam in Tirunelveli district. The third respondent has been working as Works Manager and also looking after the excise matters and labour matters. The branch at Vagaikulam is the branch of the second respondent and the beedi leaves and tobacco granules were supplied by the second respondent and beedies manufactured at Vagaikulam branch were supplied only to the second respondent. Therefore the petitioner states that the workmen at Vagaikulam branch are the workmen of the second respondent.

(b) According to the petitioner, he joined the services of the second respondent on 9.10.1983 and he was issued with service book as per rule 36 of the Tamil Nadu Beedi and Cigar Worker (Conditions of Employment) Rules, by the second respondent. Petitioner worked in various branches of the second respondent such as Mukkudal, Sadiyapuram and Senkulam, prior to his employment in Vaigaikulam branch from 1984 till the petitioner was denied employment. According to the petitioner, some of the workmen joined District Beedi Workers Union, Tirunelveli, and demanded wages and all other legal benefits as prescribed under the Minimum Wages Act.

(c) Further case of the petitioner is that the third respondent came with a false plea that he closed the Vaigaikulam branch and some of the workmen were given work in other places. According to the petitioner, since the workmen of the Vaigaikulam branch are workmen of the second respondent, the second respondent cannot deny employment to the petitioner on the ground that the branch was closed by the third respondent. It is averred in the affidavit that the third respondent prepared a document/agreement to show that the third respondent was assigned the work of manufacture of Beedi for the second respondent. The contract of agreement is dated 1.4.1990 and it was not registered. The stamp papers were purchased from Aranthangi and according to the third respondent, prior to the said written agreement, through an oral contract between the second and third respondents from 1983 onwards the third respondent became the contractor from 1983 for supply of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

beedies to the second respondent on receiving beedi leaves and tobacco granules from the second respondent. According to the petitioner, even assuming that the alleged contract was genuine one, as per clause 2(g) of the Beedi and Cigar Worker (Conditions of Services) Act 1966, read with section 2(d), the second respondent is the employer for the workmen of the third respondent.

(d) Petitioner further states that he sent a letter on 8.2.1991 to the second and third respondents demanding employment and both letters were received at the same place indicating that the third respondent is an employee of the second respondent. The petitioner having not been given with employment even after the said letter, filed appeal before the first respondent under section 31(2)(a) of Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and the same was taken on file as Beedi Case No.414 of 1991. The second respondent did not file any counter affidavit and did not let in evidence. The third respondent got examined himself and marked documents. After hearing both sides, the first respondent passed the impugned order dated 13.6.1994 and dismissed the appeal filed by the petitioner, as against which, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner argued that the order of the first respondent is contrary to the evidence adduced by the petitioner as well as the third respondent and also contrary to the records filed before him. It is further contended that the third respondent was only the Branch Manager of the second respondent and hence the third respondent shall be treated only as an agent of the second respondent and as per Section 2(g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, petitioner is the employee of the second respondent and non-consideration of the above aspect vitiates the entire proceedings. The learned counsel in support of his submissions relied on the decision of the Honourable Supreme Court reported in (1974) 4 SCC 43 = 1974 (1) LLN 292 (Mangalore Ganesh Beedi Works Vs. Union of India) and 2002 (4) LLN 398 (S.Dhakshinamurthy v. Dy.Commissioner of Labour).

4. The learned counsel for the respondents 2 and 3 submitted that the first respondent has given a factual finding and the same cannot be treated as perverse finding and this Court under Article 226 of Constitution of India, shall not interfere in the factual finding. In support of his contention, the learned counsel relied on the decisions of the Honourable Supreme court reported in (2000) 4 SCC 245 (Indian Overseas Bank v. Indian Overseas Bank Staff Canteen Workers Union) and (2001) 7 SCC 1 (Steel Authority of India Ltd. v. National Union Waterfront Workers).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. I have considered the rival submissions made by the respective counsels and perused the materials on record.

6. The point in issue is whether the petitioner is an employee of the second respondent herein in terms of section 2(g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, even though the petitioner was subsequently employed by the third respondent.

7. It is the specific case of the petitioner that he was employed in the second respondent Beedi factory from 1983 and worked in Mailapuram branch for one month, Mukkudal branch for two months and Kallidaikurichi branch for 6 to 7 months and that a service register was also opened for the petitioner by the second respondent in the year 1983, while he was working in Mukkudal branch. Petitioner joined in the Vagaikulam branch of the third respondent and he was denied employment after 31.12.1990. After joining in the branch of the third respondent, a service card was issued to him and the same is marked as Ex.M-3. Petitioner was lastly paid Rs.637/- as monthly salary after deducting provident fund contribution. Since the petitioner was not paid the minimum wages, he sent a complaint before the Labour Officer. Thereafter, petitioner was denied employment on the ground that the third respondent branch was closed after issuing closure notice, but the other four persons employed in the third respondent branch were absorbed at Koodankulam and Kallidaikurichi branches.

8. It is an admitted fact that the second respondent was supplying Beedi leaves and Tobacco granules to the third respondent and the third respondent was manufacturing Beedies for and on behalf of the second respondent since all the manufactured Beedies were bound to be supplied to the second respondent as per the agreement. The second respondent did not contest the case by filing counter affidavit and also did not appear before the first respondent. It is the evidence of the third respondent that he was the licensee for manufacturing Sidco Balagan Poo Mark Beedies and obtained licence from the Panchayat and also from the Excise department. The third respondent entered into an agreement with the second respondent on 1.4.1990 to the effect that the second respondent has to supply Beedi leaves and Tobacco granules and in turn, the third respondent, with the help of the workers, shall manufacture the Beedies and supply to the second respondent. The petitioner, from June 1984 to 4.1.1991, worked in the third respondent Beedi Company and he was paid monthly salary after getting necessary vouchers. The third respondent issued closure notice on 3.12.1990 and closed the Company due to his ill-health and loss in the business. The Company of the third respondent was closed from 4.1.1991 and the petitioner was not given employment, which is an admitted fact.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. The provident fund contribution was paid by the third respondent in favour of the petitioner in PF Account No.TN 9686/A6 and the code number 'A6' was assigned to the third respondent. The third respondent contend that he is not aware of the petitioner's employment prior to June, 1984 in the second respondent company. The third respondent's contention is, his Company's licence was cancelled on 18.1.1991 and therefore the petitioner is entitled only to closure compensation and the third respondent is willing to pay the same.

10. It is relevant to note that the third respondent appeared before the first respondent and also during conciliation proceedings on behalf of the second respondent. The third respondent admits that the Beedies manufactured at Vagaikulam branch were handed over to the second respondent branch at Kallidaikurichi and he cannot supply beedies to any other person. The third respondent denied the knowledge of the service register issued by the second respondent in favour of the petitioner even though he was appearing on behalf of the second respondent, before the first respondent and also during the conciliation proceedings. The third respondent admitted that PF No.TN-9686 is of the second respondent and the third respondent was assigned with code No.A6. The third respondent received the notice, sent by the petitioner, on behalf of the second respondent. Third respondent also admitted that the second respondent is his employer and he was working in the second respondent company for over 20 years and he used to visit the branch offices also and also admits that he was doing all the works assigned to him by the second respondent. Third respondent was working as production manager and he was also looking after excise and labour matters.

11. From the above referred evidence of the petitioner and third respondent, it has to be ascertained whether the third respondent was an independent contractor and whether the second respondent can avoid the liability ignoring section 2(g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

12. The appointment of the petitioner in the second respondent Beedi Company prior to his posting in the third respondent branch is not in dispute. The same is established by the service register maintained by the second respondent, which is marked as Ex.M-1. In the said service register it is not stated that the petitioner resigned from the Company. In the service registers of other persons, maintained by the second respondent viz., A.Albert, K.Senthilvel, C.Suresh and P.Periasamy contain the endorsement that they have resigned from their job.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. The agreement dated 1.4.1990 clearly states that the third respondent is an agent of the second respondent. For proper appreciation, clauses 2, 4 and 7 of the agreement are extracted hereunder,

> "2. The party of the second Part should take delivery as aforesaid of sufficient quantities of raw materials to manufacture such quantity of beedies as would be the requirement, of the party of the First part from time to time and deliver back the said quantity of beedies without delay as finished products at the stores wherefrom he had received the raw materials.
>
> 3. ....
>
> 4. All the raw materials received by the party of the Second Part and the goods into which they would be converted shall remain the property and goods of the party of the First Part, till the finished goods are delivered back to the latter. The party of the Second Part shall be entitled only to be paid his manufacturing charges for the manufacturing work he does and shall not have any right in the raw material and the finished goods.
>
> 5. ....
>
> 6. ....
>
> 7. The party of the Second Part not in any way deal with for his benefit, profit, advantage or gain any of the raw materials received by him from the party of the First Part except for converting them into beedies. He shall not sell, pledge, export or otherwise do anything with them in derogation of the ownership and the rights of the party of the First Part in them."

14. The provident fund account No.TN-9686 was assigned to the second respondent and on the request of the second respondent viz., the principal employer, the third respondent was allotted the code No.A6. The letter of the Employees Provident Fund Registration, Sub Regional Office, Tirunelveli dated 4.11.1993 clearly states that code No.A6 with P.F.No.TN-9686 was allotted to the third

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent on the request of the second respondent, the principal employer. For proper appreciation the letter is extracted hereunder,

"TN.9686/A6/Gr.X/Accts/TNY/SRO/93 Dt.4.11.93

To

The Labour Officer,
Tirunelveli - 2.

Sir,

Sub: Particulars of P.F.membership in respect of TN/9686/A6/94 Sri.S.Victor, S/o.Sebestian Nadar an employee of M/s.South India Tobacco Company - Reg.
Ref: Your letter 414/91/93 dt. 10.93

With reference to your letter cited, you are informed that the above said employee has been enrolled as a member of Employees Provident Fund with effect from 1.12.85 and a sum of (employee share Rs.2275/- + employer share Rs.2275/-) Rs.4550/- has been standing to the credit of the member as on 31.3.91. He is working under Sri A.R.Rajagopal Contractor SIDCO Beedi manufacturing, Vagaikulam, Pramedesam for whom a separate Code No.i.e. TN/9686/A6 has been allotted on the request of principal employer M/s.South Indian Tobacco Company.

Yours faithfully,
Sd/-
(S.MUTHUSAMY)
Accounts Officer"

In the above letter it is stated that the third respondent is a contractor of the second respondent. Hence it is beyond any doubt that the second respondent is the principal employer and the third respondent is only an agent of the second respondent. Therefore, the findings given by the first respondent is to be treated as perverse finding as the findings were given without looking into the actual material documents filed and relied upon by the petitioner as well as the third respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. On the strength of this Court's factual finding the petitioner is entitled to get the relief sought for on the ground that the third respondent is the agent of the second respondent, Section 2(g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. The third respondent can only be treated as contractor and the principal employer is the second respondent. Therefore, under section 2(g) petitioner shall be treated as the employee of the second respondent, namely, the principal employer.

16. (a) The Honourable Supreme Court in the decision reported in (1974) 4 SCC 43 = (1974) 1 LLN 292 (Mangalore Ganesh Beedi Works v. Union of India) in paragraph 34 held as follows,

> "In cases where the manufacturer or trade mark holder himself employs labour there is direct relationship of master and servant and therefore liability is attracted by reason of that relationship. There cannot be any question of unreasonableness in such a case. In the second category the manufacturer or trade mark holder engages contract labour through a contractor and he becomes the principal employer. Though such labour may be engaged by a contractor with or without the knowledge of the manufacturer or trade mark holder, this contract labour is engaged for the principal employer who happens to be the trade mark holder or the manufacturer. The liability arises by reason of contract labour engaged for or on behalf of the principal employer. In the third category, the contractor becomes the principal employer because the contractor engages labour for or on his own behalf. Where the contractor engages labour for the manufacturer it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. It is important to notice that the Act fastens liability on the person who himself engages labour or the person for whom and on whose behalf labour is engaged or where a person has ultimate control over the affairs of the of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

In the case on hand, the agreement and the official record of the Provident Fund Commission clearly show that the third respondent is the agent of the second respondent.

(b) This Court in an unreported Judgment made in W.P.NO.18925 of 1994 (the Management of Seyadu Beedi Company, Tirunelveli v. The Appellate Authority under the Beedi & Cigar Workers (Conditions of Employment) Act, 1966 & two others) dated 23.8.2001 also took a similar view. The relevant portion of the order reads thus,

> "... Therefore, I do not find any merit in the contention of the learned counsel for the petitioner that the writ petitioner is not the employer as far as the 3rd respondent is concerned when it is the admitted case that the 3rd respondent was the employee of the 2nd respondent who is a contractor and who was engaged for the benefit of the writ petitioner. The learned counsel for the petitioner made an attempt to make a distinction between the application of "the Act" for the purpose of its enforcement and for the purpose of the service conditions. The learned counsel in fact submitted that the principal employer is held liable for the enforcement of the various provisions of "the Act" and to find out as to whether the benefits conferred under "the Act" is extended to a worker, though engaged as a contract labour and "the Act" does not apply for any service conditions as to the relationship of master and servant between the worker and the employer and the contractor and the principal employer. I am unable to accept the said submission for the simple reason that the relationship between the principal employer and the employee engaged by a contractor is determined only by the nature of the contract of appointment. When once this Court comes to the conclusion that the 3rd respondent was engaged by the 2nd respondent for the benefit of the writ petitioner, the writ petitioner cannot escape from the liability as an employer in the case of non employment of the 3rd respondent at the instance of the contractor. Therefore, the said contention of the learned counsel for the petitioner is rejected. Hence, I do not find any infirmity in the impugned order of the Authority holding that the writ petitioner is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

also liable to the non employment of the 3rd respondent. Accordingly, the writ petition has no merit and the same is dismissed."

(c) The case in 2002 (4) LLN 398 (S.Dhakshinamurthy v. Dy.Commissioner of Labour) arises under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. In that case, following the judgment of the Supreme Court referred above, this Court set aside similar order passed by the Deputy Commissioner of Labour and directed to pay the amount as claimed by the worker along with 6% interest.

17. The judgments cited by the learned counsel for the respondents are only for the proposition that the High Court does not exercise appellate jurisdiction under Article 226 of Constitution of India. The said Judgment has no application to the facts of this case because, I have factually found that the second respondent is the principal employer and the third respondent is only an agent of the second respondent. Therefore the finding of fact given by the first respondent is to be treated as perverse finding and this Court is empowered to interfere with the finding of fact, which is perverse in nature.

18. In the decision reported in 2000 (II) LLJ 902 (Anna Transport Corporation Ltd., Salem v. Presiding Officer, Labour Court, Coimbatore and Another), this Court, following the judgments of the Apex Court, in paragraphs 10 to 13 held thus,

> "10. This Court in the exercise of writ jurisdiction under Art.226, where a petition is filed seeking a relief by way of quashing of award given by the Labour Court under Sec.11-A of the Industrial Disputes Act, has limited jurisdiction to demolish the impugned award, where according to this Court, such award is palpably erroneous.
>
> 11. As a general rule, the High Court would not interfere unless the order of the Labour Court is perverse or not based on any evidence or grossly illegal or based on a complete misconception of law or that no reasonable man would come to the conclusion to which the Labour Court has arrived at.
>
> 12. There is no hard and fast rule that it has always to send the matter back to the Labour Court for appropriate adjudication and for passing appropriate order in accordance with law, but in order to avoid delayed justice and for vindication of speedy and appropriate relief, the High Court may

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

in appropriate cases incorporate its own findings which may appear to be just and proper.

13. It cannot be an established rule that the High Court ought not to interfere, while exercising writ jurisdiction, with the discretion exercised by the Labour Court under Sec.11-A of the act and exercise that jurisdiction itself. What the Labour Court should do and when there is an omission on the part of it to do that, the Court, in exercise of the powers under Art.226 of the Constitution of India, can certainly do. What the Labour Court may in its discretion do, the High Court too can, under Art.226, if facts compel it to do so."

19. The Judgment reported in (2001) 7 SCC 1 (Steel Authority of India Ltd. v. National Union Waterfront Workers), cited by the learned counsel appearing for the respondents 2 and 3 has no application to the facts of this case because it is proved by the petitioner that the agreement entered into by the third respondent with the second respondent is a mere camouflage and the ultimate control of the third respondent branch is vested with the second respondent till it was closed.

20. Hence the order of the first respondent rejecting the claim of the petitioner is unsustainable and the petitioner is entitled to reinstatement with continuity of service in the second respondent Beedi Company. The petitioner is not entitled to get backwages for the period of his non-employment on the principle of 'No work - No pay'. However, the entire period of non-employment shall be taken as duty period for all other purposes. The second respondent is directed to reinstate the petitioner within a period of four weeks from the date of receipt of copy of this Order.

The writ petition is ordered in the above terms. No costs.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

The Labour Officer, Tirunelveli.

1 cc to Mr.D.Hari Paranthaman, Advocate, SR.27628

gv (co)

dv/4.7.06

W.P.No.1911 of 1998

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/